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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,163	02/08/2002	Rex Carswell George Niven	21429-12	8616
33717	7590	11/12/2003	EXAMINER	
GREENBERG TRAUIG LLP 2450 COLORADO AVENUE, SUITE 400E SANTA MONICA, CA 90404			NEILS, PEGGY A	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,163

Applicant(s)

NIVEN, REX CARSWELL
GEORGE

Examiner

Peggy A. Neils

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-14 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lyons.

Lyons teaches that it is known in the art to have a safety/warning light with a light source 12 mounted within a lens 10. The light source is positioned within the lens at a height wherein the horizontal center of the light emits light through a smooth surface 30 of the lens and this portion of the lens is positioned between and upper 26 and lower 28 portions with both portions having Fresnel lens characteristics. There is also an upper surface 42 with Fresnel characteristics except for a general vertical section 38 which emits a central beam.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Sharrah et al.

Sharrah et al teaches that it is known in the art to have a safety/warning device with a body 20 which receives batteries 120 and an upper end 200 in which is received a grommet 280 which has first engaging means (flared ends, see page 3, paragraph 0048) which contacts the wall of the body and internal engagement means shown in Figure 11 which receives the LED 285. A lens closes the top of the flashlight device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharrah et al in view of Galli.

Sharrah et al does not show a circuit board for the LED. Galli teaches that it is known in the art to have a battery operated light with an LED as the light source and to include a circuit board 22 in the lighting device. The circuit board includes a first contact 46 and a connection with second contact 50. Element 46 is readable as a contact strip.

Rotation of the flashlight head 10 turns the flashlight on and off. The switch is readable as being shock proof. Galli also provides for the circuit board to perform other functions (see page 3, the bottom of paragraph 0024). It would have been obvious to one skilled in the art that Sharrah et al could be modified to include a circuit board with a contact arrangement in the same manner as taught by Galli because both references are

directed to battery operated flashlights using an LED as the light source. In the absence of any unobvious or unexpected results for the switch to be an off-centered switch and to include a low battery indicator on the circuit board is a design choice as Galli indicates that the circuitry could perform other functions.

Claims 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharrah et al and Galli as applied to claim 2 above, and further in view of Lyons. Lyons teaches that it is known in the art to have a safety/warning light with a light source 12 mounted within a lens 10. The light source is positioned within the lens at a height wherein the horizontal center of the light emits light through a smooth surface 30 of the lens and this portion of the lens is positioned between and upper 26 and lower 28 portions with both portions having Fresnel lens characteristics. There is also an upper surface 42 with Fresnel characteristics except for a general vertical section 38 which emits a central beam. It would have been obvious to one skilled in the art that Sharrah et al could have been modified to have a lens configured with plain and Fresnel characteristics in the same manner as taught by Lyons because both references are directed to a battery operated safety/warning device.

Oath/Declaration

It was not executed in accordance with either 37 CFR 1.66 or 1.68.

Allowable Subject Matter

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter: Claim 6 contains the limitation that the lens has a finger for contacting the switch on the lighting device to turn the light on and off. The prior art did not show or suggest any structure depending from the lens to turn on a lighting device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Northrup et al, Parsons et al, Winther and Lash et al are cited of interest.

Any questions regarding this Office action should be directed to Examiner Neils at (703) 308-6554.


Y. MY QUACH-LEE
PRIMARY EXAMINER